

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FREDERICK SUMMEY,	:	
Petitioner	:	No. 4: CV-05-0676
	:	(Judge McClure)
v.	:	(Magistrate Judge Blewitt)
	:	
UNITED STATES OF AMERICA,	:	
Respondent	:	

ORDER

April 25, 2005

BACKGROUND:

On April 4, 2005, petitioner, Frederick Summey, an inmate at the United States Penitentiary at Allenwood, White Deer, Pennsylvania, filed the instant petition for writ of habeas corpus. The same day, Summey filed with this court a "motion pursuant to U.S.C. § 2244 for permission to file a second or successive U.S.C. § 2255".

The matter was initially referred to United States Magistrate Judge Thomas M. Blewitt. Magistrate Judge Blewitt gave preliminary consideration to the petition, and on April 19, 2005 filed a 13-page report and recommendation with the concluding recommendation that the petition be dismissed for lack of jurisdiction, as the petition was essentially a 28 U.S.C. § 2255 motion.

In a footnote, the magistrate judge noted that petitioner also filed with the court a motion under § 2244 for permission to file a second or successive § 2255 motion. He further noted simply that such a motion must be filed in the appropriate court of appeals.

On April 20, 2005, the clerk docketed a letter from Summey indicating that he had recently found out that his documents seeking permission to file the second or successive § 2255 motion should have been filed with the United States Court of Appeals for the Third Circuit, and asked that the document be forwarded to the appropriate court.

The court will not await any further objections to the report and recommendation as it is quite clear that in the first place, this court is without subject matter jurisdiction to consider a second or successive § 2255 motion, and the motion for permission to file a second or successive motion under 28 U.S.C. § 2255 should be forwarded to the Court of Appeals for its consideration.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The report and recommendation of United States Magistrate Judge Thomas M. Blewitt (rec. doc. no. 9, filed April 19, 2005) is adopted in full and approved for the reasons stated therein.

2. The petition for a writ of habeas corpus, filed April 4, 2005, is dismissed, without prejudice, for lack of subject matter jurisdiction, as it constitutes a second or successive motion under 28 U.S.C. § 2255.

3. The clerk is directed to forward to the United States Court of Appeals for the Third Circuit Summey's motion for permission to file a second or successive motion under 28 U.S.C. § 2255 as well as the underlying petition for writ of habeas corpus, which presumably is the petition he would file with this court if and when he obtains permission to do so from the Third Circuit.

4. The clerk is directed to close the case file.

5. There is no basis for a certificate of appealability.

s/ James F. McClure, Jr.
James F. McClure, Jr.
United States District Judge